

## § 95.015

## 33 CFR Ch. I (7–1–12 Edition)

*State* means a State or Territory of the United States of America including but not limited to a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands.

*Under the influence* means impaired or intoxicated by a drug or alcohol as a matter of law.

*Underway* means that a vessel is not at anchor, or made fast to the shore, or aground.

*Vessel* includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

*Vessel owned in the United States* means any vessel documented or numbered under the laws of the United States; and, any vessel owned by a citizen of the United States that is not documented or numbered by any nation.

*Waters subject to the jurisdiction of the United States* means those waters described in § 2.38 of this chapter.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987; CGD 84-099, 53 FR 13117, April 21, 1988, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001; USCG-2001-9044, 68 FR 42601, July 18, 2003]

### § 95.015 Operating a vessel.

For purposes of this part, an individual is considered to be operating a vessel when:

(a) The individual has an essential role in the operation of a recreational vessel underway, including but not limited to navigation of the vessel or control of the vessel's propulsion system.

(b) The individual is a crewmember (including an officer), pilot, or watchstander not a regular member of the crew, of a vessel other than a recreational vessel.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987, as amended at USCG-2006-24371, 74 FR 11211, Mar. 16, 2009]

### § 95.020 Standard for under the influence of alcohol or a dangerous drug.

An individual is under the influence of alcohol or a dangerous drug when:

(a) The individual is operating a recreational vessel and has a Blood Alcohol Concentration (BAC) level of .08

percent or more, by weight, in their blood;

(b) The individual is operating a vessel other than a recreational vessel and has an alcohol concentration of .04 percent by weight or more in their blood; or,

(c) The individual is operating any vessel and the effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987; CGD 84-099, 53 FR 13117, April 21, 1988, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001]

### § 95.025 Adoption of State blood alcohol concentration levels.

(a) This section applies to operators of recreational vessels on waters within the geographical boundaries of any State that has established by statute a blood alcohol concentration level for purposes of determining whether a person is operating a vessel under the influence of alcohol.

(b) If the applicable State statute establishes a blood alcohol concentration level at which a person is considered or presumed to be under the influence of alcohol, then that level applies within the geographical boundaries of that State instead of the level provided in § 95.020(a) of this part.

(c) For the purposes of this part, a standard established by State statute and adopted under this section is applicable to the operation of any recreational vessel on waters within the geographical boundaries of the State.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001]

### § 95.030 Evidence of under the influence of alcohol or a dangerous drug.

Acceptable evidence of when a vessel operator is under the influence of alcohol or a dangerous drug includes, but is not limited to:

(a) Personal observation of an individual's manner, disposition, speech, muscular movement, general appearance, or behavior; or,

(b) A chemical test.

[CGD 84-099, 53 FR 13117, April 21, 1988; CGD 84-009, 53 FR 13117, Apr. 21, 1988, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001]

**§ 95.035 Reasonable cause for directing a chemical test.**

(a) Only a law enforcement officer or a marine employer may direct an individual operating a vessel to undergo a chemical test when reasonable cause exists. Reasonable cause exists when:

(1) The individual was directly involved in the occurrence of a marine casualty as defined in Chapter 61 of Title 46, United States Code, or

(2) The individual is suspected of being in violation of the standards in §§ 95.020 or 95.025.

(b) When an individual is directed to undergo a chemical test, the individual to be tested must be informed of that fact and directed to undergo a test as soon as is practicable.

(c) When practicable, a marine employer should base a determination of the existence of reasonable cause, under paragraph (a)(2) of this section, on observation by two persons.

[CGD 84-099, FR 47532, Dec. 14, 1987; CGD 84-099, 53 FR 13117, Apr. 1, 1988]

**§ 95.040 Refusal to submit to testing.**

(a) If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by a law enforcement officer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding and the individual will be presumed to be under the influence of alcohol or a dangerous drug.

(b) If an individual refuses to submit to or cooperate in the administration of a timely chemical test when directed by the marine employer based on reasonable cause, evidence of the refusal is admissible in evidence in any administrative proceeding.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987, as amended by USCG-1998-4593, 66 FR 1862, Jan. 10, 2001]

**§ 95.045 General operating rules for vessels inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code.**

While on board a vessel inspected, or subject to inspection, under Chapter 33 of Title 46 United States Code, a crewmember (including an officer), pilot, or watchstander not a regular member of the crew:

(a) Shall not perform or attempt to perform any scheduled duties within four hours of consuming any alcohol;

(b) Shall not be intoxicated at any time;

(c) Shall not consume any intoxicant while on watch or duty; and

(d) May consume a legal non-prescription or prescription drug provided the drug does not cause the individual to be intoxicated.

[CGD 84-099, 52 FR 47532, Dec. 14, 1987, as amended at USCG-2006-24371, 74 FR 11211, Mar. 16, 2009]

**§ 95.050 Responsibility for compliance.**

(a) The marine employer shall exercise due diligence to assure compliance with the applicable provisions of this part.

(b) If the marine employer has reason to believe that an individual is intoxicated, the marine employer shall not allow that individual to stand watch or perform other duties.

**PART 96—RULES FOR THE SAFE OPERATION OF VESSELS AND SAFETY MANAGEMENT SYSTEMS**

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